IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Messerges et al.	)
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For:	System and Method for Secure and Convenient Management of Digital Electronic Content	)
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Serial No.:	09/942,010	)
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Filed:	August 29, 2001	)
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Examiner:	Sherkat, A.	)
		)
Art Unit:	2131	)

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Commissioner for Patents
P.O. Box 1450
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Attention: Board of Patent Appeals and Interferences

APPELLANTS' REPLY BRIEF

This reply brief is in furtherance of the Examiner's Answer, mailed on November 21, 2006, and includes the applicant's response to the Examiner's most recent arguments, focusing on what appears to have become a primary point of contention, namely, whether the particular teachings being relied upon from the primary reference, Sweet et al., US Patent Application Publication No. 2002/0031230, in support of the rejection of the claims of the present application, are entitled to a priority date, which establishes the particular teachings as prior art, and/or whether the principal reference makes known or obvious each and every feature of the claims in a manner where each of the alleged equivalent elements are used together in a manner, which is contextually consistent with the claimed interaction of the elements.

It is noted, that the Examiner has for the first time finally acknowledged the inappropriate reliance upon Tokue et al., US Patent Application Publication No. 2002/0002413, in response to applicants' appeal brief, where Tokue et al., '413, was identified as not constituting a prior teaching upon which an art rejection could be based. The Examiner in turn has extended the teachings of Sweet et al., '230, as allegedly making obvious the features for which the Examiner previously relied upon the improperly cited Tokue et al., '413.

Claims 1-13, 15-32, 34-36 and 38-53

With regards to the continued rejection of the claims based upon Sweet et al., '230, the priority applications from which Sweet et al., '230 claims priority are effectively technical publications, that bear little formal resemblance to the published application being relied upon in support of the rejection. In other words, there is no direct relationship between the particular language used in the latter filed application, and the priority documents from which priority is claimed, such that the alleged equivalent teaching does not directly map to a corresponding teaching in the priority applications, i.e. provisional applications USSN 60/225,796 and USSN 60/239,019. It is noted that the priority applications are publicly available, at least via public pair, and therefore could have been cited to more directly, to the extent that any teaching being relied upon in the subsequently filed application was in fact present in the applications from which priority was claimed. In other words, most if not all of the paragraphs in the subsequently filed application do not correspond to any specific paragraph that can be found in either of the two priority documents.

The Examiner has made no attempt to show support for the alleged equivalent teachings as being supported by the teachings of the above noted provisional applications from which the cited reference claims priority. In essence, to the extent that the rejection relies upon a teaching that is present in the published application, but which can not be similarly shown to be similarly taught by the application from which the application claims priority, the particular teaching can not reasonably be characterized as a prior teaching for purposes of rejecting the claims of the present application, as it would not be entitled to the date of the priority application. This is not

unlike the Examiner's previous erroneous assertions, that a reference was alleged to be entitled to the filing date of the foreign priority application for purposes of supporting an art rejection, (noted above with respect to the previously relied upon Tokue et al., '413), which has only recently been rescinded. Consequently, the basis upon which all of the subsequently discussed rejections are called into doubt to the extent that the Examiner has failed to cite to the documents that can be confirmed to be entitled to the claimed priority dates.

Claims 1-13 and 15-19

Nevertheless, even if the relied upon teachings could be said to have proper support for a priority date that is sufficient to support a prior art rejection, the reference still fails to make known or obvious each and every feature of the claims. In responding to applicant's arguments, the examiner acknowledges that a working key is constructed from three key values (see page 26, line 19 to page 27, line 3 of Examiner's Answer). However, the Examiner then appears to suggest that when a domain value forms one of the three components of the working key, that it becomes sufficient to produce a distinction based upon membership in the domain. However, such a formulation does not produce the claimed effect as it will only effectively distinguish based upon membership in a domain in one of the two ways, in so far as non-members are precluded from receiving and decrypting, but not all members are enabled to receive and decrypt the digital content.

As provided in claim 1, association with the domain permits the communication device to "selectively receive and decrypt digital content based upon membership in the domain". Whereas the prior art having a working key incorporating a domain key as one of its components might be effective in excluding non-domain members from receiving and decrypting the digital content, it does not insure domain members will be able to receive and decrypt the digital content. The selective receipt and decryption based upon membership in the domain, establishes membership in the domain as the criteria upon which a device will be able to selectively receive and decrypt the content. In other words, members of the domain will be able to receive and decrypt the content, and non-members will not.

The instance alleged to be equivalent by the Examiner creates the situation in which some members will not be able to receive and decrypt, because they may fail one of the other criteria, and therefore they can not be said to allow for the selective receipt and decryption based upon membership in the domain. Such an exclusion on the part of the teachings of Sweet et al., '230, is expressly articulated in paragraph [0112], where workgroup profiles may differ from other workgroup profiles of the same domain, thereby defining the unique rights and needs of each workgroup within a domain. Additionally, as noted previously, credentials provide a further role in granting access, contrary to the claims, which articulates that the selective receipt and decryption is based upon membership in the domain, which is further consistent with the shared cryptographic key (between members of the domain) as being the cryptographic key used to receive and decrypt the digital content. Consequently, the relied upon reference fails to teach each and every feature of the claims, in so far as it fails to provide for the selectivity relative to receipt and decryption based upon membership in the domain, which works in both directions (i.e. exclusive of all non-domain members and inclusive of all domain members for purposes of establishing the ability to selectively receive and decrypt based upon membership in the domain). Therefore the acknowledged further segregation of access to encrypted data objects, (Examiner's Answer, page 27, lines 10-16), in effect, teaches away from the claimed feature.

To the extent that claims 2-13 and 15-19 are dependent upon independent claim 1, they are similarly allowable at least to the extent that they depend upon an allowable base claim, which is allowable for the reasons noted above. Consequently, they are similarly allowable.

Claim 20

With regard to claim 20, the Examiner merely generically asserts that Sweet et al., '230, discloses the features of claim 20 without providing any cite to any specific teaching, such that the applicant can effectively evaluate or meaningfully respond to the rejection. Nevertheless, Sweet et al., '230, fails to teach or suggest, where the communication device is linked to the domain, based upon a determination that the communication device has access to one or more

valid cryptographic elements, in response to a user request, and the subsequent request of the communication device to be registered in the domain.

To the extent that claims 21-32, 34 and 35 are dependent upon independent claim 20, they are similarly allowable at least to the extent that they depend upon an allowable base claim, which is allowable for the reasons noted above. Consequently, they are similarly allowable.

Claim 36

With regard to claim 36, the teachings referenced by the Examiner fail to address adding a device to the domain, but alternatively is directed to confirming whether a device is already a member. For example, paragraph [0392], of Sweet et al., '230, provides that in order to qualify for the retrieval of a new member token, at least a minimal amount of data will be sent to the PXa3, including the member's domain name. A member would not have a member's domain name, if or until, the member was already a member of the domain. Consequently, the alleged equivalent teaching could not correspond to the features of the claims, which provide for "a domain authority receiving a request to add a communication device to the domain", and therefore the teachings of the reference do not relate to the claims in a manner which is consistent with the claimed context.

To the extent that claims 38-42 are dependent upon independent claim 36, they are similarly allowable at least to the extent that they depend upon an allowable base claim, which is allowable for the reasons noted above. Consequently, they are similarly allowable.

Claim 43

With regard to claim 43, the Examiner has failed to identify a second link for coupling the communication device to the domain authority, in addition to the first communication link, which links the communication device to the domain-based digital rights management environment. Further, the portions (page 11, paragraph [0149] and page 24, paragraphs [0392] to [0394]) of the cited reference, Sweet et al., '230, which have been noted by the Examiner as

addressing the managing of profiles and authenticating users, is silent as to adding a communication device to the domain as provided by the claim. It is noted, that the Examiner has added the phrase "corresponding to member device" after "creating, administering, requesting, and distributing member profiles" at page 20, lines 18-19 of the Examiner's Answer, where the reference does not teach the noted actions relative to a member device.

Claim 44

With regard to claim 44, contrary to the Examiner's assertions, Sweet et al., '230, fails to make known each and every feature of the claim, as the digital content is not made accessible to the first communication device by binding an encrypted form of the requested digital content to the cryptographic key of the domain to which the first communication device is registered, upon authentication of the domain. As noted previously, the content is bound to a working key, which is not generally shared by the one or more communication devices of the domain, but which has further limitations based upon still further criteria.

To the extent that claims 45-53 are dependent upon independent claim 44, they are similarly allowable at least to the extent that they depend upon an allowable base claim, which is allowable for the reasons noted above. Consequently, they are similarly allowable.

Claims 14, 33 and 37

The Examiner has reconsidered the objection to claims 14, 33 and 37, and where previously the Examiner indicated that the claims were not taught or suggested by Sweet et al., '230, the Examiner has reevaluated his position in view of his mistaken reliance upon Tokue et al., US Patent Application Publication No. 2002/0002413, which does not constitute a prior reference in support of the Examiner's rejection, as noted above. In reevaluating the applicability of Sweet et al., '230, to these further features, the Examiner cites specific portions of the reference, which are discussed below with respect to the specific claims.

Claim 14

In reversing his position, the Examiner has suggested that Sweet et al., '230, makes obvious storing the encrypted digital content in an open-access storage element. However, while a member token file is identified as being stored in the member's client system, there is nothing to suggest that the storage of the member's client system is open-access storage. Even when an Examiner alleges obviousness, unless or until the Examiner alleges the feature is inherent, he still must show where the reference or combination of references teaches each and every feature of the claims. Here there is no such suggestion of inherency, nor is there any support alleged for the feature being inherent. The reference is simply silent, as to the claimed feature. This is not enough to suggest the presence of the claimed characteristic.

Claim 33

Similar to claim 14, in reversing his position, the Examiner has suggested that Sweet et al., '230, makes obvious storing the encrypted digital content in an open-access storage element. However, again, while a member token file is identified as being stored in the member's client system, there is nothing to suggest that the storage of the member's client system is open-access storage. Even when an Examiner alleges obviousness, unless or until the Examiner alleges the feature is inherent, he still must show where the reference or combination of references teaches each and every feature of the claims. Here there is no such suggestion of inherency, nor is there any support alleged for the feature being inherent. The reference is simply silent, as to the claimed feature. This is not enough to suggest the presence of the claimed characteristic.

Claim 37

In reversing his position relative to claim 37, the Examiner has suggested that Sweet et al., '230, makes obvious a determination that the one or more communication device of the domain do not exceed a predetermined upper limit. However, the Examiner then relates makes

reference to time limits that can be framed using a forward maintenance level and a backward maintenance level to deny a domain member access to a constructive key management encrypted information. However, the reference is silent as to the number of communication devices in the domain, which is further claimed in association with the claimed context of adding a communication device to the domain (claim 36). Furthermore, the reference in formulating a time window relates to a particular domain member, but does not relate to the one or more communication devices of the domain, and therefore even if one attempts to suggest that the upper limit applies to a time corresponding to a time window, the reference fails to suggest applying the window to the domain of communication devices, as opposed to a particular domain member.

In view of the above noted reasoning, the applicants would respectfully request that the Examiner's decision to finally reject the pending claims be overturned, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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